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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/725,219	12/01/2003	Glen R. George	AGC01 P-300	2131

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EXAMINER

CHAPMAN, JEANETTE E

ART UNIT	PAPER NUMBER
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3635

DATE MAILED: 05/17/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/725,219

Applicant(s)

GEORGE, GLEN R.

Examiner

Chapman E Jeanette

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 February 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-38 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-20 is/are allowed.
- 6) ☒ Claim(s) 21-38 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

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35 USC 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 21-23, 26-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kemp (4704828) in view of Bradley et al (6773206).

Kemp discloses a modular window well comprising:

- The vertical wall members 10 include first and second spaced apart end portions; each end includes a connecting structure;
- A wall having side walls having opposite edges and a central portion extending from the opposite end edges defining a central space
- Upper and lower spaced part webs defining gaps;
- the vertical wall member having a central portion horizontally spaced from the first and second ends defining a central space bounded by the end portions and the central portion; see annotations on patent copy;
- first and second extension wall members 14 having a first side edges secured to the end portions;
- each extension wall member further including second side edge portions having a connecting structure 16/nails/screws for securing the extension wall to the building foundation;

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- vertical side walls include the attachment flanges 14
- elongate channel 12 to provide stiffness in the vertical wall member and also provide stops adjacent each side edge to engage another identical window well nested within;
- the end portions of the vertical wall members 10 and the first and second extensions comprise flanges 14 having a plurality of openings 16 therethrough;
- the vertical member 10 has a U-shaped in plan view;
- a plurality of wall members 10 are vertically stacked;
- a barb 22 adjacent each side edge and an opening 24 adjacent each side edge configured to receive the barb of an identical window well to interconnect window well or vertical members in a stacked configuration;

Kemp shows offset portions but not on the offset portions on the flanges. Bradely et al figure 8 shows these flanges with stop structures 30,31 extending transversely relative to the flange structure adjacent each side edge; the stop structures are configured to engage another identically nested web member in order to neatly stack members minimizing the appearance of seams. Bradely et al also includes the mating wedge/openings on vertically stacked walls. One of ordinary skill in the art would have placed the mating connectors and tapered portions at any location needing a connection point. It would have been obvious to one of ordinary skill in the art to modify the end portions to include tapered

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ends with mating wedge/openings in order to seamlessly mate with the vertical member above or below.

Claims 28-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kemp in view of Bradley and further in view of Poole (6484455). Kemp shows radiused wall but lacks the central portion of the vertical wall member including transversely extending portions forming a step. Poole discloses this transversely extending step on the window well. Poole also discloses the transversely extending portions having spaced apart upper and lower walls/webs defining a gap and forming an end edge of a step. Poole discloses a web extending transversely towards the central space and extending between and interconnecting the upper and lower webs to reinforce the steps. See figure 10. the upper and lower webs extend generally horizontally and extend inwardly towards a central space. See figure 10It would have been obvious to one of ordinary skill in the art to modify Kemp to include the steps with the structure of Poole in order to provide a means of escape via the window well and to form steps which are supported by the earth.

Claims 32-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kemp in view of Bradley and further in view of Gavin. Kemp lacks the ribs extending or interconnecting the upper and lower walls and the limitations of claim 33.

Bradley shows first and second wall members that are vertically juxtaposed with an upright portion of the first wall member overlapping the

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second wall member; the overlapping portion of the first wall member including a boss 31 teeth/gaps having a cavity 30 teeth/gaps facing an upright portion of the second wall member. Moreover, a fastener, of a screw nail type is extended horizontally through the second wall member and into the boss to interconnect the first and second wall members.

Gavin discloses the ribs 26 interconnecting the upper and lower walls. It would have been obvious to one of ordinary skill in the art to modify Kemp to include the ribs and the upright portions to stiffen and strengthen the vertical structure as shown by Gavin and Bradley

Gavin shows a web with a boss having a cavity adapted to receive a threaded fastener. See column 5, lines 10-30. It would have been obvious to employ this additional means to secure the vertical wall members together. For the limitations of claims 36-38 see above. Gavin also shows the rib 24 defining an outer surface and including a cavity, not shown, for receiving a screw. The opening extends through the upper wall of the transversely extending portion 42.

Claims 24-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kemp in view of Bradely et al as applied to claim 21 and further in view of Poole.

Poole discloses the structural foam material for a window well. It would have been obvious to one of ordinary skill in the art to construct Kemp of the foam material in order to provide a light weight easy to construct window well.

Claims 1-20 are allowable over the prior art of record.

Applicant's arguments are moot given the new ground of rejection.

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Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Chapman E Jeanette whose telephone number is 703-308-1310. The examiner can normally be reached on Mon.-Fri, 8:30-6:00, every other fri. off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Friedman Carl can be reached on 703-308-0839. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Jeanette Chapman
Primary Examiner